DOCKET NO. HHB-CV-15-6030870-S	:	SUPERIOR COURT
SHERI SPEER	:	JUDICIAL DISTRICT OF NEW BRITAIN
VS.	:	
CONNECTICUT DEPARTMENT OF AGRICULTURE; CITY OF NORWICH; AND MICHELE LOMBARDI F/K/A MICHELE KELLOUGH	:	MAY 6, 2019

MEMORANDUM OF DECISION

In this case, the defendant Michele Lombardi, the animal control officer for the city of Norwich, Connecticut, issued disposal orders for two dogs owned by the plaintiff, Sheri Speer, after the dogs allegedly attacked three children and their grandmother as they were walking across the street from the plaintiff's property. The plaintiff appealed the disposal orders to the commissioner of the defendant Department of Agriculture (department). Bruce A. Sherman, a veterinarian, was designated as hearing officer. After a full evidentiary hearing, Sherman issued a proposed final decision recommending that the disposal orders be affirmed. The commissioner reviewed the record and adopted the proposed final decision as the final decision, thereby affirming the disposal orders.

The plaintiff appealed to this court pursuant to General Statutes § 4-183. She argues that the record lacks substantial evidence that her dogs were the dogs involved in the attack. She further argues that General Statutes § 22-358 (c), which authorizes the disposal of "any biting dog," does not authorize the disposal of her dogs because the witnesses to the attack were unable to identify which of the two similar dogs allegedly bit the victims. She also argues that the

restraint of her dogs violates her constitutional rights and that the department violated the automatic stay provisions of 11 U.S.C. § 362 (a) when it continued the administrative proceeding despite the fact that the plaintiff was in bankruptcy.

The defendants argue that the department's final decision is supported by substantial evidence; that it was proper to order disposal of both dogs, without specifically identifying the "biting dog," because both dogs engaged in the attack; that the plaintiff failed adequately to brief her constitutional claims and, in any event, they lack merit; and that the department's administrative proceeding was excepted from the automatic bankruptcy stay because it fell within the "police and regulatory power" exception in 11 U.S.C. § 362 (b) (4).

The court has reviewed the entire administrative record and all briefs and arguments of the parties. Substantial evidence in the record supports the department's finding that the plaintiff's two dogs were involved in the attack. Although the question regarding the applicability of § 22-358 (c) is a close one, the court concludes that the commissioner did not abuse his discretion in ordering the disposal of both dogs when the "biting dog" could not be identified but both dogs engaged in the attack. The plaintiff's remaining claims lack merit. Accordingly, for the reasons stated below, the plaintiff's appeal is dismissed.

I

The following paragraphs summarize the facts found by the department that are material to this appeal.

Sheri Speer is the owner of two dogs, "Skyler" and "Dolly." Skyler is a female pit bull, gray and white in color. She is Dolly's mother and was five years of age on October 8, 2013. Dolly is a female pit bull, gray and white in color, and was one year of age on October 8, 2013. The appearance and description of the two dogs is very similar. Dolly was slightly smaller. Skyler has cropped ears; Dolly does not.

Lisa Hall is the grandmother of three children, twins Audrena and Marlena Downing and their younger brother, Marquice Downing, Jr. (Marquice Jr.). At the time of the incident at issue, twins Audrena and Marlena were four years old and Marquice Jr. was nine months old. The three Downing children resided with their mother, Carlena Hall, at 123 Talman Street in Norwich. At approximately 6:30 p.m. on October 8, 2013, Hall took her three grandchildren from their apartment at 123 Talman Street to walk to a park in the vicinity of a nearby school. Their route required them to pass 151 Talman Street, which is the next residence on Talman Street and is owned by Speer.

While walking on the sidewalk across the street from 151 Talman Street, Hall heard barking and then saw two dogs, which she described as pit bulls, crossing the street toward her and her grandchildren. One dog initiated an attack on nine-month-old Marquice Jr., knocking over the stroller and inflicting a wound over Marquice Jr.'s eye. In an effort to protect her brother, four-year-old Marlena put her arm between him and the attacking dog. That dog then attacked Marlena's arm.

Marlena's twin, Audrena, ran to escape, with the other dog chasing her in pursuit. Audrena reached the apartment of Judy Sanchez at 123 Talman Street. Sanchez later told the animal control officer that Audrena was loudly banging on her door, and when Sanchez let her in, she was so terrified that she ran and hid behind a sofa.

The dog that attacked Marquice Jr. and Marlena inflicted deep soft tissue injuries on Marlena's arm and broke a bone in the arm. Hall testified at the hearing that the dog continued to attack Marlena's arm and described the character of the bite attack as taking chunks of meat from Marlena's arm and not releasing Marlena. Hall attempted to force the dog to stop the attack by kicking at it, and at some point in the incident, the dog inflicted a bite wound to Hall's leg.

Joseph Barron, a passing motorist who observed the incident, exited his car, picked up a stick, and repeatedly struck the dog in an attempt to make it release Marlena's arm. A passenger in Barron's car later told a Norwich police officer who responded to the scene that she saw the dogs run across the street and begin to attack the little girls. She also saw Barron exit his car and strike the dogs before they finally returned to their yard.

In a written statement and in testimony at the hearing, Hall reported that Carlos Rivera, who was working on Speer's house, appeared and called one of the dogs back, and the dog went to him while at the same time Rivera was saying, "sorry, sorry."

Norwich police officers and emergency services personnel arrived at the scene. Police officers Meikle and Ethier located Audrena at 123 Talman Street, Apartment 2. Ethier stated that

Audrena was extremely terrified. Meikle was able to confirm that Audrena was not injured and returned her to her grandmother, Hall.

Lisa Hall, Marlena, Audrena, and Marquice Jr. were all transported to Backus Hospital by ambulance. The children's parents, Carlena Hall and Marquice Downing, met them at the hospital. Hall testified that she was given something to clean her wound, but she refused further treatment because of her concern about Marlena's injuries. Backus Hospital staff told Hall that the hospital was not equipped to help Marlena, and Marlena, accompanied by Hall, was transported by ambulance to Connecticut Children's Medical Center in Hartford.

Hall testified that upon arrival at Connecticut Children's Medical Center, Marlena was seen by a number of doctors, including surgeons and an infection control doctor. One doctor told Hall that x-rays revealed that Marlena's arm was broken and the repair would involve placing a screw in her arm. He also explained his concern about dog bite wounds resulting in bone infection and his concern about the rabies vaccination status of the dogs because he did not want Marlena to have to undergo rabies post-exposure treatment.

According to the Norwich police department incident report, written by Officer Kyle Long, and Ethier's testimony, Ethier and other police officers located the two dogs inside the house at 151 Talman Street, where the owner, Speer, was present. When the officers knocked on the door, Rivera initially came to the door. The officers informed Rivera that they needed to take the dogs. Speer came to the door and initially refused to provide the officers with her dogs, but

later did so after speaking with a police lieutenant. Speer stated that she was inside the house during the incident and did not know what happened. She also stated that Rivera was doing work on her house and was asked to watch the dogs for her. She said that her dogs were up to date on their shots, that they had never been aggressive in the past, and were friendly.

Another Norwich police officer spoke with Rivera, who told him that he secured the dogs on the back deck which was fenced in. Rivera said that the door leading inside the house was closed and he was inside the house doing construction work.

Rivera walked the dogs to a Norwich animal control van and placed them in a cage in the van. Ethier then transported them to the dog pound. Ethier testified that when he was in the process of moving them from the van into the pound, they exhibited extremely vicious behavior, and he felt the need to supplement the police report to document the vicious nature of the dogs. Ethier also testified that one end of the plaintiff's back deck was sufficiently low to the ground that the dogs could have escaped from that end of the deck.

Marquice Downing, the children's father, was not present at the attack but gave a statement and testified at the hearing. He stated that he, Carlena Hall, and their three children had walked by Speer's residence earlier in the day on October 8, 2013, and he had seen two gray pit bulls on the back patio. He said they were barking and snarling and acting vicious and agitated. He walked by the Speer residence later that day and again observed the dogs displaying the same behavior. He said that the dogs have always acted aggressive when he walked by the

house on prior occasions and, in his opinion, could escape from the back deck and get back on it if they wanted to do so.

Downing also testified that he was at 123 Talman Street the next day (October 9, 2013) when Rivera came to the house and said that he was sorry that Downing's children were attacked by the dog. According to Downing, Rivera said he took one of the dogs away from the scene and that he thought it was Skyler that did the biting.

Animal control officer Michele Lombardi[1] took over the investigation of the incident on October 9, 2013. At that time, Lombardi had been an animal control officer for twenty to twenty-five years and had been the senior animal control officer for Norwich for eleven years. She was assigned the case after being informed of the incident by two police officers. The officers had been present at the scene after the incident and told her that they almost shot the dogs but that there was not a safe backdrop to do so.

Lombardi's first priority was to determine the dogs' rabies vaccination status. She called Speer and left a message requesting the vaccination status of each dog. Because Speer did not respond to Lombardi's telephone message, Lombardi went to Speer's residence to speak directly with her. Lombardi told Speer that Marlena Downing's doctor wanted the dogs euthanized and tested for rabies because, due to Marlena's compromised condition, he did not want her to undergo rabies post-exposure treatment. Speer refused to have the dogs tested for rabies.

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[1] In October of 2013, Lombardi's last name was Kellough, the name that appears in several exhibits. By the time of the hearing on August 28, 2014, she had married and changed her name.

Lombardi called Speer's veterinarian and obtained a record indicating that Dolly was currently vaccinated for rabies, but no vaccination record was found for Skyler. Speer initially indicated that Skyler was also currently vaccinated but, on the following weekend, admitted that Skyler was not current on her rabies vaccination. Even after re-interviewing witnesses, Lombardi could not determine which dog inflicted the bite wounds. The dogs are similar in appearance, but all witnesses reported that only one dog participated in the biting. Because Lombardi could not determine which dog was involved, she informed Speer that both dogs would be quarantined pursuant to § 22-358 (c). Speer read and signed two forms for off-property quarantine orders. Lombardi advised Speer that if she did not choose to have the dogs euthanized and tested for rabies, disposal orders would be issued for the dogs because of the severity of the attack.

On October 10, 2013, Lombardi charged Speer with the following infractions: two counts of violation of General Statutes § 22-364 (dogs roaming at large); two counts of violation of General Statutes § 22-363 (nuisance – vicious disposition); two counts of violation of General Statutes § 22-349 (unlicensed dogs); and one count of violation of General Statutes § 22-339 (b) (requiring rabies vaccination). A Superior Court record, dated August 12, 2014, indicates that Speer pleaded guilty to all seven counts.

Lombardi testified that she determined through her investigation that two dogs were involved in the incident. One dog caused the bite injuries. The other dog chased Audrena Downing. In Lombardi's opinion, Audrena would have been attacked if she had not made it to

the safety of Sanchez's residence before that dog caught up with her. Lombardi stated that both dogs roamed off the property, both dogs viciously went after people, and when they were at the pound, both dogs were extremely aggressive toward people and animals.

Lombardi testified that she gathered sufficient information in her investigation to support her conclusion that Speer's dogs Skyler and Dolly were the attacking dogs in this case. She further testified that a pit bull could escape and return to the deck at the Speer residence at 151 Talman Street because one end of the deck was close to the ground.

On October 15, 2013, after consulting her supervisor and others in her department, Lombardi issued disposal orders on both Skyler and Dolly under the authority of § 22-358 (c). Lombardi stated that she does not take lightly a decision to issue disposal orders and that, in her twenty-five years as an animal control officer, she had previously issued only two or three disposal orders. She stated that a lot of the reasons for issuing the disposal orders was based on the dogs' behavior, but she also did not think that Speer would comply with conditions of restraint orders based on her past history of not being cooperative and not being a responsible dog owner. Lombardi testified that in the interest of public safety, she did not feel like she had any choice but to issue the disposal orders.

Speer testified that she had never seen her dogs jump over the fence or railing around her deck. She also testified that over the years, she has seen other dogs roaming the neighborhood, including other pit bulls, and that she had called the "dog warden" to report them. Speer testified

that between 6:00 and 6:30 p.m. on October 8, 2013, Rivera, a maintenance man who was working in Speer's yard and laundry room, told her that there was a commotion outside and police wanted her dogs because there was an incident. Speer testified that her dogs were on the deck at the time. She said that Rivera had been watching her dogs on the deck.

Speer said that she had had Dolly since she was a puppy. Speer said she obtained Skyler from Speer's daughter, Amber Cote, about two weeks before the incident and that Speer had plans to call for an appointment for Skyler's vaccinations. Amber Cote testified that she told Speer that Skyler needed to be vaccinated and that it was Speer's responsibility.

Speer testified that Skyler and Dolly were sweet and docile. She said that the dogs had never shown any aggression toward her daughter Amber or toward Amber's children, and that the dogs had never shown any aggression toward Speer's third dog, a Maltese, or her cat. Amber Cote testified that she had owned Skyler since Skyler was six months old and that she had never had a problem with the two dogs.

Speer also testified that the people living at 123 Talman Street, which she owned, were under eviction at the time of the incident. She further testified that she had Rivera deliver flowers and a sympathy card to the family of the child that had been bitten, but that gesture did not constitute an apology or an admission of guilt.

Rivera testified that he had direct sight of the two dogs on the deck during the time the three victims were attacked. He denied that he called one of the dogs back on to the property and

that he apologized to Hall at the time of the attack for the behavior of the dogs. He stated that he apologized to Marquice Downing, the children's father, on October 9, 2013, but that the apology was only for the victims being attacked and not for any involvement of Skyler or Dolly in the attack. When asked if it was his responsibility to take care of the dogs, Rivera replied that "[m]y job was not to watch the dogs or nothing. My job was to fix my work." He then stated that since he did not put them in a kennel in the back yard, it was his responsibility to watch them on the deck.

II

Based on the foregoing findings of fact, the hearing officer concluded that there was ample evidence in the record to affirm the disposal orders on Dolly and Skyler, considering the severity of the attack and the number of victims involved. The hearing officer concluded that the unprovoked dog bite attack caused injuries to Hall, Marlena, and Marquice Jr. The injuries to Marlena were particularly severe, but the injuries to Maurice Jr. would likely have been more severe if Marlena had not taken protective action. Hall suffered puncture wounds and bruising below her knee.

The hearing officer discussed the severity of injuries to Marlena, which required her immediate transfer from Backus Hospital to Connecticut Children's Medical Center. Marlena's attending physician at the children's hospital was extremely concerned about her condition. The physician's concern arose not only from the extensive soft tissue and bone damage that Marlena

suffered, but also from concern that complications of a deep wound infection would lessen the chance for a positive outcome from the surgical procedure required for the orthopedic repair of her fractured arm. The physician wanted to avoid the additional complication of administering rabies post-exposure treatment. He and Lombardi made efforts to ascertain the rabies vaccination status of the offending dogs, but were initially unsuccessful because of Speer's lack of cooperation.

The hearing officer concluded that the unprovoked attack was severe and vicious. As support for that conclusion, he cited the type and character of Marlena's wounds, the fact that there were additional victims, and the fact that the offending dog, while biting Marlena, would not release her arm but was shaking her arm, inflicting even more injury.

The hearing officer also considered the fact that Audrena ran to escape the attack and was chased by the second dog. The hearing officer concluded that there was a strong probability that Audrena would have suffered a bite attack if the second dog had caught up to her before she reached the safety of Sanchez's apartment. Lombardi had testified, based on her investigation, that Audrena had a pretty good head start.

The hearing officer observed that Speer's appeal was based primarily on her claim that her dogs were not the offending dogs in the bite attack incident. He determined, to the contrary, that the city of Norwich had presented substantial credible evidence that Skyler and Dolly were the offending dogs. The evidence included the testimony of credible witnesses, statements from

witnesses, and information in the Norwich police report. He also considered the evidence that Speer pleaded guilty to all counts of the infractions issued by Norwich in connection with the October 8, 2013 bite attack incident.

The hearing officer further determined that no credible evidence supported Speer's claim that it was dogs other than hers that were the offending dogs. He observed that Rivera gave inconsistent statements regarding his actions and responsibilities with regard to the dogs on October 8, 2013, and that Rivera's testimony as to what he said at the scene of the incident was in direct conflict with testimony and statements from credible witnesses.

The hearing officer then stated: "The issue of which of the two dogs, 'Skyler' or 'Dolly,' attacked and bit the three victims is not resolved. The record shows that the dogs are very similar in appearance. None of the witnesses to the incident, when interviewed by ACO Lombardi, were able to distinguish which dog inflicted the bite wounds on the victims. There is evidence that Carlos Rivera made the statement that it was probably 'Skyler' and not 'Dolly' that did the biting, but he denied saying that in his testimony. Based on the evidence that both dogs are a danger to the public, irrespective of the testimony of Sheri Speer and Amber Cote that the dogs are not aggressive toward people with whom they are familiar, the City was justified in issuing Disposal Orders on both 'Skyler' and 'Dolly' in the interest of public safety."

The hearing officer further concluded that the evidence also justified Lombardi's conclusion that restraint orders would not adequately protect the public from Skyler and Dolly in

light of the aggressive behavior of both dogs. The record supported Lombardi's concern that Speer would not comply with restraint orders because she had previously failed to comply with animal control laws. Based on the evidence, the hearing officer "strongly" recommended that the final decision maker, "in order to protect the public," affirm the disposal orders.

The proposed final decision was served on the parties on November 24, 2014. The parties were afforded the opportunity to present exceptions and briefs to the department's commissioner. The commissioner reviewed the entire record and then heard oral argument on July 29, 2015. On August 5, 2015, the commissioner issued notice that substantial evidence in the record supported affirmance of the disposal orders. He adopted the hearing officer's proposed final decision in its entirety as the final decision in the case. The plaintiff filed a timely appeal.[2]

III

The plaintiff appeals pursuant to General Statutes § 4-183.[3] "[J]udicial review of the

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[2] The trial court (*Levine, J.T.R.*) entered a judgment of nonsuit in November, 2015, based on the plaintiff's failure to appear in person for a pretrial settlement conference. After the plaintiff's motion to open the judgment was denied, the plaintiff appealed to the Appellate Court, which reversed the judgment and remanded the case to this court for further proceedings. See *Speer* v. *Dept. of Agriculture,* 183 Conn. App. 298, 192 A.3d 489 (2018).

[3] General Statutes § 4-183 (j) sets out the statutory scope of review for administrative appeals. It provides: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment."

commissioner's action is governed by the Uniform Administrative Procedure Act . . . General Statutes §§ 4-166 through 4-189 . . . and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable." (Citation omitted; internal quotation marks omitted.) *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). "Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred." (Internal quotation marks omitted.) *Schallenkamp* v. *DelPonte*, 229 Conn. 31, 40, 639 A.2d 1018 (1994). "The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and to provide a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action." (Internal quotation marks omitted.) *Cadlerock Properties Joint Venture, L.P.* v. *Commissioner of Environmental Protection*, 253 Conn. 661, 676, 757 A.2d 1 (2000), cert. denied, 531 U.S. 1148, 121 S. Ct. 1089, 148 L. Ed. 2d 963 (2001). "In determining whether an administrative finding is supported by substantial evidence, the reviewing court must defer to the agency's assessment of the credibility of witnesses. . . . The reviewing court must take into account contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence."

(Internal quotation marks omitted.) *Frank* v. *Dept. of Children & Families*, 312 Conn. 393, 411-12, 94 A.3d 588 (2014).

Our Supreme Court has repeatedly stated that "administrative tribunals are not strictly bound by the rules of evidence and . . . may consider exhibits [that] would normally be incompetent in a judicial proceeding, [as] long as the evidence is reliable and probative." *Lawrence* v. *Kozlowski*, 171 Conn. 705, 710, 372 A.2d 110 (1976), cert. denied, 431 U.S. 969, 97 S. Ct. 2930, 53 L. Ed. 2d 1066 (1977). "It is axiomatic, moreover, that it is within the province of the administrative hearing officer to determine whether evidence is reliable . . . and, on appeal, the plaintiff bears the burden of proving that the commissioner, on the facts before him, acted contrary to law and in abuse of his discretion . . . Neither this court nor the [Appellate Court] may retry the case or substitute its own judgment for that of the [hearing officer with respect to] the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Citations omitted; internal quotation marks omitted.) *Do* v. *Commissioner of Motor Vehicles*, 330 Conn. 651, 667–68, 200 A.3d 681 (2019).

Section 4-183 (j) requires affirmance of an agency's decision unless the court finds that substantial rights of the person appealing have been prejudiced by the claimed error. "The complaining party has the burden of demonstrating that its substantial rights were prejudiced by the error." (Internal quotation marks omitted.) *Miller* v. *Dept. of Agriculture,* 168 Conn. App.

255, 266, 145 A.3d 393, cert. denied, 323 Conn. 936, 151 A.3d 386 (2016). "It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion. . . ." (Internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles,* 254 Conn. 333, 343, 757 A.2d 561 (2000).

"Even for conclusions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion." (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, 310 Conn. 276, 281, 77 A.3d 121 (2013). "[C]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes." (Internal quotation marks omitted.) Id.

"On the other hand, it is the function of the courts to expound and apply governing principles of law." *State Medical Society* v. *Board of Examiners in Podiatry*, 208 Conn. 709, 717, 546 A.2d 830 (1988). While our Supreme Court has held that a time-tested agency interpretation of a statute will be afforded deference, it has also held that such deference is appropriate "only when the agency has consistently followed its construction over a long period of time, the statutory language is ambiguous, and the agency's interpretation is reasonable." Id.,

719. The reasonableness of an agency's interpretation is determined by applying "our established rules of statutory construction." (Internal quotation marks omitted.) *McCullough* v. *Swan Engraving, Inc.*, 320 Conn. 299, 305, 130 A.3d 231 (2016). If a statute is not ambiguous, or if the agency's interpretation of the statute is not consistent, time-tested, and reasonable, the court's review of the agency's interpretation of the statute is de novo.

A

The plaintiff's first claim on appeal is that the defendants have failed to demonstrate that either of the plaintiff's dogs bit a third party so as to justify a disposal order pursuant to § 22-358 (c). In a brief filed on January 22, 2019, the plaintiff argued that the officers responding to the bite incident "were unsure whether the dog or dogs in question were other pit bulls, not owned by Ms. Speer, in the neighborhood." In an amended brief filed on February 19, 2019, the plaintiff argued that § 22-358 (c) authorizes the disposal of a "biting dog," and that the record did not establish which dog, if either, was the "biting dog."

The plaintiff's argument that other pit bulls in the neighborhood may have been the offending dogs is not persuasive. Although the plaintiff testified that there were other pit bulls in her neighborhood, and although she introduced evidence of such dogs licensed in the streets near her residence, substantial evidence in the record supports the conclusion that the dogs that attacked Hall and her grandchildren. Hall and the passing motorists who stopped to help her stated that the attacking dogs came from the plaintiff's yard and returned to the plaintiff's yard.

There is evidence that Rivera, responding to the commotion caused by the incident, went out and retrieved one of the dogs and took it back to the plaintiff's house. There is also evidence that Rivera apologized to Marquice Downing the day after the attack and stated that he thought it was Skyler, not Dolly, who had done the biting. Although the plaintiff disputed this evidence, and although Rivera denied his involvement and alleged statements, the hearing officer was the arbiter of credibility of witnesses. He found that Rivera's testimony lacked credibility and was in conflict with the statements of credible witnesses. This court may not substitute its judgment for determinations of credibility made by the agency's hearing officer.

The amended brief filed on February 19, 2019, makes a statutory claim rather than an evidentiary claim. In that brief, the plaintiff claims that § 22-358 (c) authorizes the disposal only of a "biting dog." The sentence in subsection (c) on which the plaintiff relies provides: "The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary." The plaintiff argues that only one dog was a "biting dog," and § 22-358 (c) does not authorize the disposal of a dog that did not bite. The argument is not implausible, and the court has given it considerable thought. The court concludes that, in the circumstances of this case, the statute does authorize the disposal of both dogs engaged in the attack, even though the identity of the specific "biting dog" cannot be established with certainty.

"When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [the court] seek[s] to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the]case, including the question of whether the language actually does apply." (Internal quotation marks omitted.) *Price* v. *Independent Party of CT-State Central*, 323 Conn. 529, 539, 147 A.3d 1032 (2016). Pursuant to General Statutes § 1–2z, the "meaning of a statute, shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If . . . the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *State* v. *Josephs*, 328 Conn. 21, 26, 176 A.3d 542 (2018). "It is a basic tenet of statutory construction that the intent of the legislature is to be found not in an isolated phrase or sentence but, rather, from the statutory scheme as a whole. . . . Furthermore, in reviewing the statutory language, we will assume that the legislature intended to accomplish a reasonable and rational result." (Citations omitted; internal quotation marks omitted.) *State* v. *Brown*, 235 Conn. 502, 516, 668 A.2d 1288 (1995).

The plaintiff relies solely on the sentence in § 22-358 (c) that expressly confers authority on an animal control officer to order the restraint or disposal of a "biting dog." The court, however, must consider that sentence in the context of the statutory section as a whole and in the context of related statutes.

Section 22-358[4] generally addresses the authority to deal with dogs and other

[4] General Statutes § 22-358 is captioned "Killing of dogs doing damage. Quarantine of biting dogs, cats or other animals. Notice. Seizure. Euthanasia and examination of potentially rabid animals. Complaints by persons sustaining damage by dog to poultry, ratite, domestic rabbit, companion animal or livestock. Orders. Appeals." It provides in relevant part:

"(a) Any owner or the agent of any owner of any domestic animal or poultry, or the Chief Animal Control Officer, any animal control officer, any municipal animal control officer, any regional animal control officer or any police officer or state policeman, may kill any dog which he observes pursuing or worrying any such domestic animal or poultry.

"(b) Any person who is bitten, or who shows visible evidence of attack by a dog, cat or other animal when such person is not upon the premises of the owner or keeper of such dog, cat or other animal may kill such dog, cat or other animal during such attack. Such person shall make complaint concerning the circumstances of the attack to the Chief Animal Control Officer, any animal control officer or the municipal animal control officer or regional animal control officer of the town wherein such dog, cat or other animal is owned or kept. Any such officer to whom such complaint is made shall immediately make an investigation of such complaint.

"(c) If such officer finds that the complainant has been bitten or attacked by such dog, cat or other animal when the complainant was not upon the premises of the owner or keeper of such dog, cat or other animal the officer shall quarantine such dog, cat or other animal in a public pound or order the owner or keeper to quarantine it in a veterinary hospital, kennel or other building or enclosure approved by the commissioner for such purpose. When any dog, cat or other animal has bitten a person on the premises of the owner or keeper of such dog, cat or other animal, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may quarantine such dog, cat or other animal on the premises of the owner or keeper of such dog, cat or other animal. The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary. Notice of any such order shall be given to the person bitten by such dog, cat or other animal within twenty-four hours. The owner of such animal shall pay all fees as set forth in section 22-333. On the fourteenth day of such quarantine the dog, cat or other animal shall be examined by the commissioner or someone designated by the commissioner to determine whether such quarantine shall be continued or removed. Whenever any quarantine is ordered under the provisions of this section, notice thereof shall be given to the commissioner and to the person bitten or attacked by such dog, cat or other animal within twenty-four hours. Any owner or keeper of such dog, cat or other animal who fails to comply with such order shall be guilty of a class D misdemeanor. If an owner or keeper fails to comply with a quarantine or restraining order made pursuant to this subsection, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may seize the dog, cat or other animal to ensure such compliance and the owner or keeper shall be responsible for any expenses resulting from such seizure. Any person aggrieved by an order of any municipal animal control officer, the Chief Animal Control Officer, any animal control officer or any regional animal control officer may request a hearing before the commissioner within fourteen days of the issuance of such order. Any order issued pursuant to this section that requires the restraint of an animal shall be effective upon its issuance and shall remain in effect during any appeal of such order to the commissioner. After such hearing, the commissioner may affirm, modify or revoke such order as the commissioner deems proper. Any dog owned by a police agency of the state or any of its political subdivisions is exempt from the

animals that engage in attacks on people or animals. In general terms, subsections (a), (b), and (d) authorize the killing of a dog while it is actively engaged in an attack or in pursuit of certain animals, while subsections (c) and (h) deal with the authority of appropriate officials to order restraint or disposal of a dog after investigation of a complaint that a dog has bitten or attacked a

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provisions of this subsection when such dog is under the direct supervision, care and control of an assigned police officer, is currently vaccinated and is subject to routine veterinary care. Any guide dog owned or in the custody and control of a blind person or a person with a mobility impairment is exempt from the provisions of this subsection when such guide dog is under the direct supervision, care and control of such person, is currently vaccinated and is subject to routine veterinary care.

"(d) Any dog, while actually worrying or pursuing deer, may be killed by the Chief Animal Control Officer or an animal control officer or by a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection, or by any police officer or state policeman. The owner or keeper of any dog found worrying or pursuing a deer shall be guilty of a class D misdemeanor.

"(e) Any person who kills any dog, cat or other animal in accordance with the provisions of this section shall not be held criminally or civilly liable therefor.

"(f) The owner of any dog, cat or other animal which has bitten or attacked a person and has been quarantined pursuant to subsection (c) of this section may authorize the humane euthanization of such dog, cat or other animal by a licensed veterinarian at any time before the end of the fourteenth day of such quarantine. Any such dog, cat or other animal so euthanized before the end of the fourteenth day of quarantine shall be examined for rabies by the Connecticut Department of Public Health virology laboratory or any other laboratory authorized by the Department of Public Health to perform rabies examinations. The veterinarian performing the euthanasia shall be responsible for ensuring that the head of the euthanized animal is delivered by him or his designated agent within forty-eight hours to an appropriate laboratory designated by said department for rabies examination.

"(g) Repealed by P.A. 05-175, S. 24.

"(h) A person who sustains damage by a dog to such person's poultry, ratite, domestic rabbit, companion animal or livestock as defined in section 22-278 shall make complaint concerning circumstances of the attack by such dog on any such animal or livestock to the Chief Animal Control Officer, any animal control officer or the municipal animal control officer or regional animal control officer of the town in which such dog is owned or kept. An officer to whom such complaint is made shall immediately investigate such complaint. If such officer finds that the complainant's animal has been bitten or attacked by a dog when the attacked animal was not on the premises of the owner or keeper of the attacking dog and provided the complainant's animal was under the control of the complainant or on the complainant's property, such officer, the commissioner, the Chief Animal Control Officer or any animal control officer may make any order concerning the restraint or disposal of such attacking dog as the commissioner or such officer deems necessary. . . ."

person or domestic animals. More specifically, subsection (a) authorizes any owner of domestic animals or poultry, any animal control officer, or any police officer to "kill any dog which he observes pursuing or worrying any such domestic animal or poultry." Subsection (b) of § 22-358 authorizes "[a]ny person who is bitten, or who shows visible evidence of attack by a dog, cat or other animal" to "kill such dog, cat or other animal during such attack." Subsection (d) authorizes certain officials to kill any dog while such dog is "actually worrying or pursuing deer."

Subsections (c) and (h) govern disposal orders following an investigation. Subsection (c) addresses the investigation of complaints that a dog has bitten or attacked a person. It is a lengthy subsection that requires the quarantine of a dog in certain circumstances, specifies certain procedures for such quarantine, authorizes certain officials to order the restraint or disposal of a "biting dog," imposes penalties for owners or keepers who fail to comply with quarantine or restraining orders, and authorizes appeals to the commissioner of orders issued under the subsection. Subsection (h) concerns the investigation of complaints that a dog has done damage to a person's poultry, ratite, domestic rabbit, companion animal or livestock. Subsection (h) authorizes the commissioner or animal control officers to order the restraint or disposal of a dog that is found to have "bitten or attacked" any such animal when the bitten or attacked animal was not on the premises of the owner of the attacking dog.

Taken as a whole, § 22-358 evinces the intent of the legislature to protect persons and animals from biting and attacking dogs. By its plain language, § 22-358 (h) authorizes a disposal

order for any dog that is found, after investigation, to have "bitten or attacked" a person's poultry, ratite, domestic rabbit, companion animal, or livestock. Although § 22-358 (c) refers to disposal orders only for "biting dogs" and does not expressly say "biting or attacking dogs," it would be bizarre to conclude that the legislature intended to authorize the disposal of dogs that attack chickens but not dogs that attack persons.

The conclusion that § 22-358 (c) authorizes disposal orders in appropriate circumstances for dogs that have engaged in vicious behavior but have not actually bitten a person is further supported by a consideration of § 22-363, which makes it unlawful to "own or harbor a dog or dogs which is or are a nuisance by reason of vicious disposition . . . ."[5] Section 22-363 expressly authorizes the court or judge "to make such order concerning the restraint or disposal of such dog or dogs as may be deemed necessary." It does not, on its face, require that proof of *biting* is necessary to establish a "vicious disposition."

In light of the entire statutory scheme, it was not unreasonable for the department to conclude that § 22-358 (c) authorized the disposal of both Skyler and Dolly in this case even though only one of the two dogs was the "biting dog." In the circumstances of this case, the department could reasonably conclude that only disposal of both dogs would adequately protect

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[5] In its entirety, General Statutes § 22-363 provides: "No person shall own or harbor a dog or dogs which is or are a nuisance by reason of vicious disposition or excessive barking or other disturbance, or, by such barking or other disturbance, is or are a source of annoyance to any sick person residing in the immediate vicinity. Violation of any provision of this section shall be an infraction for the first offense and a class D misdemeanor for each subsequent offense and the court or judge may make such order concerning the restraint or disposal of such dogs or dogs as may be deemed necessary."

the public. That conclusion was reasonable because substantial evidence established that one of the two dogs was the biting dog; that the dogs were so similar in appearance that the identity of the biting dog could not be determined; and that both dogs engaged in attacking behavior and exhibited vicious tendencies toward people and toward other animals.

More specifically, substantial evidence in the record supported the hearing officer's finding that both Skyler and Dolly engaged in the attack on Hall and her grandchildren. The biting attack on Marlena, Hall, and Marquice Jr. was severe both in its intensity and in its impact. The evidence supported the hearing officer's finding that Marlena's wounds, in particular, were especially severe. She sustained deep soft tissue injury and a broken arm that required orthopedic surgery to repair it. Hall testified that Marlena was hospitalized for four days after the attack, and her arm was in a cast for eight weeks. Hall and Lombardi both testified that physicians treating Marlena were deeply concerned about possible bone infection and sought to avoid having to give her post-exposure rabies treatment.

While only one of the two dogs bit Hall, Marlena, and Marquice Jr., the evidence supports a finding that the other dog participated in the attack. More specifically, there was evidence that the other dog chased Audrena, causing her to be so terrified that she ran to the nearest neighbor's apartment and, when admitted to the apartment, hid behind a sofa, saying only "The dog, the dog." It was not unreasonable for the department to conclude that Audrena escaped injury only because she "had a pretty good head start" and was able to reach safety

before the pursuing dog caught up to her.

The evidence further supported the finding that the plaintiff was not a responsible dog owner. There was evidence that she had failed to license both Skyler and Dolly, had not had Skyler vaccinated against rabies, and failed to cooperate with Lombardi's investigation into the dogs' vaccination status. There was, in addition, evidence that both Skyler and Dolly exhibited extremely aggressive behavior when they were taken into custody and that they remained extremely aggressive toward people and animals at the time of the hearing, several months after they were first impounded. Finally, the plaintiff pleaded guilty to two counts of violations of § 22-363 (nuisance - vicious dog) and two counts of violation of § 22-364 (allowing dogs to roam at large) in relation to the October 8, 2013 incident.

Considering the entirety of the evidence that the hearing officer was entitled to credit, the conclusion that both disposal orders were warranted as to both Skyler and Dolly was not arbitrary, capricious, or an abuse of discretion and did not result from an improper construction or application of § 22-358 (c).

B

The plaintiff's second argument is that the defendants failed to conduct a required examination on the fourteenth day of the quarantine period to determine whether the quarantine should be continued or removed, as § 22-358 (c) requires, and that the failure to do so "effected an unconstitutional taking" in violation of the plaintiff's rights under the fifth and fourteenth

amendments to the federal constitution. The plaintiff's claim of a statutory violation is not supported by the record, and the plaintiff failed to support her claim of a constitutional violation with any discussion of relevant legal authority.

As to the statutory claim, § 22-358 (c) provides in relevant part: "If such officer finds that the complainant has been bitten or attacked by such dog, cat or other animal when the complainant was not upon the premises of the owner or keeper of such dog, cat or other animal the officer shall quarantine such dog, cat or other animal in a public pound or order the owner or keeper to quarantine it in a veterinary hospital, kennel or other building or enclosure approved by the commissioner for such purpose. . . . The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary. . . . On the fourteenth day of such quarantine the dog, cat or other animal shall be examined by the commissioner or someone designated by the commissioner to determine whether such quarantine shall be continued or removed." The plaintiff claims that Lombardi did not provide any evidence that such an examination was performed.

To the contrary, Lombardi testified that when dogs are held pursuant to a quarantine order, they are examined on a daily basis for any change in behavior or signs of sickness or injuries. She testified that animal control officers keep records, in the form of reports, notes, and

cage slips. Although she did not proffer a copy of any such document, she testified that she would have probably put in a sentence that the quarantine was "without incident" and that disposal orders had been placed on the dogs. She testified that "Once a disposal order is put on them, it kind of takes over from the quarantine."

As our Supreme Court has held, "[t]he purpose of the quarantine requirement in § 22-358 is readily ascertainable from the meaning of that word. 'Quarantine' means to isolate as a precaution against contagious disease or a detainment to prevent exposure of others to disease. . . . While the specific concern of the legislature may have been to protect the victim of a dog bite from the threat of rabies, that restricted purpose is not expressed in the language of § 22-358. Nowhere is the control of rabies mentioned. The intent expressed in the language of the statute is the controlling factor. . . . The trial court correctly concluded that § 22-358 was intended not only to protect persons bitten by a dog from the threat of rabies, but also to protect the general public from contact with diseased dogs." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Wright* v. *Brown*, 167 Conn. 464, 467-68, 356 A.2d 176 (1975). In other words, the quarantine requirement of § 22-358 is intended to protect the public from contact with diseased dogs. But the authority of an animal control officer to issue a restraint or disposal order concerning a biting dog is not specifically linked to the quarantine of the animal to determine whether it is diseased. As the Appellate Court has held, the provision in § 22-358 (c) authorizing a disposal order is "remedial and civil in nature," intended to "obviat[e] the threat that dangerous

animals pose to the public." *Miller* v. *Dept. of Agriculture*, supra, 168 Conn. App. 269.

The evidence in the record does not support the plaintiff's claim that Lombardi failed to examine the dogs at the end of the fourteen-day quarantine period; to the contrary, she testified that the dogs were monitored daily throughout the quarantine period for evidence of illness. But, as she also testified, once the disposal orders had been issued, there was no question of returning the dogs to their owner. Section 22-358 (c) provides that "[a]ny order issued pursuant to this section that requires the restraint of an animal shall be effective upon its issuance and shall remain in effect during any appeal of such order to the commissioner." An order mandating the disposal of a dog necessarily implies that the dog requires restraint. The animal control officer was statutorily authorized to continue to hold the dog during the pendency of any appeal of the disposal orders.

The plaintiff claims, without citation to legal authority or any analysis, that the continued impoundment of her dogs violated her constitutional rights under the fifth and fourteenth amendments. Courts are not required to review issues that have been improperly presented through an inadequate brief. "Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Citation omitted; internal quotation marks omitted.) *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016). The court declines to review this claim, which is merely asserted and not

supported by analysis or legal authority.

C

The plaintiff's final claim is that the department violated the automatic stay provision of 11 U.S.C. § 362 when it failed to suspend the administrative proceeding after being notified that the plaintiff was the subject of a bankruptcy proceeding. Section 362 (a) of the federal bankruptcy code does broadly prohibit "(1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy] case . . . ." 11 U.S.C. § 362 (a). Citing *Krondes* v. *O'Boy*, 69 Conn. App. 802, 808, 796 A.2d 625 (2002), the plaintiff argues that Connecticut's courts have repeatedly held that the automatic stay is comprehensive and prohibits any action taken to advance an administrative proceeding. *Krondes*, however, is inapposite; it involved an action against a debtor's spouse to recover a fraudulent transfer, and such a case had been held by the federal courts to be within the scope of the automatic stay. But the automatic stay of § 362 (a) is not absolute; several exceptions to the automatic stay are set forth in 11 U.S.C. § 362 (b). More specifically, § 362 (b) (4) excepts from the scope of the automatic stay "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a monetary judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory powers." 11

U.S.C. § 362 (b) (4). The term "governmental unit" encompasses states, municipalities, departments, and agencies. See 11 U.S.C. § 101 (27).

"The general policy behind [§ 362 (a)] is to grant complete, immediate, albeit temporary relief to the debtor from creditors, and also to prevent dissipation of the debtor's assets before orderly distribution to the creditors can be effected." *S.E.C.* v. *Brennan*, 230 F.3d 65, 70 (2d Cir. 2000). While this is an important public policy, the exception for actions to enforce police or regulatory powers also serves an important public policy. "[T]he purpose of this exception is to prevent a debtor from frustrating necessary governmental functions by seeking refuge in bankruptcy court. . . . Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws . . . the action or proceeding is not stayed under the automatic stay." (Citations omitted; internal quotation marks omitted.) Id., 71. The United States Supreme Court has explained that "[i]t is clear from the legislative history that one of the purposes of this exception is to protect public health and safety." *Midlantic National Bank* v. *New Jersey Department of Environmental Protection.*, 474 U.S. 494, 503, 106 S. Ct. 755, 88 L. Ed. 2d 859 (1986).

In this case, on January 22, 2015, the plaintiff's counsel notified the commissioner that Speer was the subject of a Chapter 11 bankruptcy proceeding and asserted that the dogs were chattel property subject to the control of the trustee. On February 5, 2015, the plaintiff's attorney submitted a letter to the commissioner, arguing that the automatic stay applied. The

commissioner held a status conference to discuss the applicability of the stay and his authority to rule on the applicability of the stay. After receiving briefs from both parties, the commissioner issued a decision on July 17, 2015, in which he determined that the automatic stay did not apply because the proceeding before him fell within the "police and regulatory powers" exception of § 362 (b) (4).

"In attempting to apply the § 362 (b) (4) exception, courts look to the purposes of the law that the government seeks to enforce to distinguish between situations in which a state acts pursuant to its police and regulatory power, and where the state acts merely to protect its status as a creditor." (Internal quotation marks omitted.) *Solis* v. *SCA Restaurant Corp.*, 463 B.R. 248, 251 (E.D.N.Y. 2011). "Two tests have historically been applied to resolve this question: (1) the 'pecuniary purpose' test (also known as the 'pecuniary interest' test), and (2) the 'public policy' test." Id., 252. "Under the pecuniary purpose test, a court looks to whether a governmental proceeding relates to public safety and welfare, which favors application of the stay exception, or to the government's interest in the debtor's property, which does not." Id. "The second test – namely, the public policy test – distinguishes between proceedings that adjudicate private rights and those that effectuate public policy." (Internal quotation marks omitted.) Id.

The commissioner concluded that the department was acting pursuant to its police and regulatory powers when it held the administrative hearing to rule on the disposal orders issued on Skyler and Dolly. He observed that the hearing officer found ample evidence to affirm the

disposal orders based on "the severity of the attack and the number of victims involved." The hearing officer further found that the disposal orders were justified "in the interest of public safety" because both dogs "are a danger to the public." The commissioner further concluded that the administrative proceeding was in furtherance of effectuating public policy and advancing the public's interest.

The commissioner also concluded that he had the authority to determine whether the automatic stay is applicable. "The court in which the litigation claimed to be stayed is pending has jurisdiction to determine not only its own jurisdiction but also the more precise question whether the proceeding pending before it is subject to the automatic stay." (Footnote omitted.) *In re Baldwin Corp. Litigation,* 765 F.2d 343, 347 (2d Cir. 1985). As the commissioner observed in his July 17, 2015 ruling, Connecticut courts have routinely considered the applicability of the automatic stay to cases pending before them. See, e.g., *McCarthy* v. *Chromium Process Co.*, Superior Court, judicial district of Hartford, Docket No. X07-CV-07-4030658, 2009 WL 2451489 (July 15, 2009, *Berger, J.*); *Holbrook* v. *Huntington & Kildare*, Superior Court, judicial district of Hartford, Docket No. CV 95-0548320, 1996 WL 537901 (September 17, 1996, *Sheldon, J.*).

The commissioner's careful decision correctly identified the governing principles of law, which are not addressed in the plaintiff's briefs. This commissioner correctly concluded that the automatic stay did not apply to the proceeding before him because that proceeding related to the

police and regulatory power of the department, and was not brought to vindicate a pecuniary interest but to protect public safety. The administrative proceeding was properly held to be within the exception of § 362 (b) (4).

CONCLUSION

For all the reasons stated above, the court concludes that the plaintiff has not met her burden of proving that her substantial rights were prejudiced by any error of law. Substantial evidence in the record supported the department's decision that the disposal orders on the dogs Skyler and Dolly should be affirmed. Accordingly, the plaintiff's appeal is dismissed. Judgment shall enter for the defendants.

BY THE COURT,

Sheila A. Huddleston, Judge